

REMARKS

In response to the final Office Action of March 18, 2009, applicants request that all claims be allowed in view of the following remarks. Claims 36-42, 44-50, 52-62, 64-66, and 68-97 are pending in this application, with claims 36, 48, 56, 64, 68, 69, 82, and 85 being independent. Claims 85-87 and 97 have been withdrawn from consideration, leaving claims 36-42, 44-50, 52-62, 64-66, 68-84, and 89-96 presented for examination.

Claim Rejections Under 35 U.S.C. § 103

Each of independent claims 36, 48, 56, 64, 68, 69, and 82 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,212,548 (DeSimone) in view of U.S. Patent No. 6,748,421 (Ozkan) and U.S. Patent No. 7,233,992 (Muldoon).

As discussed in applicants' November 5, 2007 Amendment in Reply to Action of July 3, 2007, applicants submit that there is no suggestion or motivation to combine the teachings of DeSimone, Ozkan, and Muldoon and, therefore, any proper combination of the teachings of DeSimone, Ozkan, and Muldoon does not describe or suggest all of the features recited in independent claims 36, 48, 56, 64, 68, 69, and 82. In particular, the Examiner's position that a person having ordinary skill in the art would have been motivated to modify the teachings of DeSimone in view of the teachings of Ozkan and Muldoon as proposed in the final Office Action fails because, as discussed in applicants' November 5, 2007 Amendment in Reply to Action of July 3, 2007, the natural extension of the of DeSimone's teachings to include video chat capabilities results in a system that enables a user to engage in multiple *real-time* videoconferencing sessions with a plurality of other participants at one time. Once such a videoconference has been established, real-time video feeds of the other participants are available without requiring any additional user intervention.

Therefore, absent any impermissible hindsight gleaned from review of the present application, at the time of the invention, there would have been no motivation to modify the teachings of DeSimone in view of the teachings of Ozkan and Muldoon, which contemplate non-real-time, non-presence-based delivery of messages, as proposed by the final Office Action.

The final Office Action appears to argue that DeSimone does not contemplate real-time video conferencing. In particular, the final Office Action asserts:

[A]s seen on Column 15, lines 58-63 [of DeSimone], there is a communication . . . of mixed mode messages with a variety of attachments, which includes video attachments.

Final Office Action of March 18, 2009 at page 23, lines 13-14.

Applicants disagree. DeSimone does not provide a definition for or otherwise describe what is meant by the term mixed-mode messages. Furthermore, while applicants acknowledge that DeSimone alludes to "communicating . . . messages with a variety of attachments," applicants point out that DeSimone does not describe or suggest that such attachments include videos, as asserted by the final Office Action. DeSimone at col. 15, lines 62-63. As such, applicants maintain that the natural extension of the of DeSimone's teachings to include video chat capabilities results in a system that enables a user to engage in multiple real-time videoconferencing sessions with a plurality of other participants at one time.

Accordingly, for at least the foregoing reasons, applicants maintain that the proposed combination of DeSimone, Ozkan, and Muldoon is improper and, therefore, that none of DeSimone, Ozkan, Muldoon, or any *proper* combination thereof describes or suggests all of the features of independent claims 36, 48, 56, 64, 68, 69, and 82. As such, applicants request reconsideration and withdrawal of the rejection of independent claims 36, 48, 56, 64, 68, 69, and 82.

Dependent claims 37, 38, 49, 50, 57, 58, 65, 66, 70-71 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeSimone in view of Ozkan and Muldoon. Dependent claims 39-42, 59-62, and 90-96 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeSimone, Ozkan, and Muldoon in view of U.S. Patent No. 6,795,863 (Doty). Dependent claims 44-47 and 52-55 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeSimone, Ozkan, and Muldoon in view of U.S. Patent No. 6,529,475 (Wan). Dependent claims 83 and 84 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeSimone, Ozkan, and Muldoon in view of U.S. Patent No. 6,223,213 (Cleron).

None of Doty, Wan, and Cleron cures the deficiencies of the combination of DeSimone, Ozkan, and Muldoon noted above in connection with independent claims 36, 48, 56, 64, 68, 69,

and 82. Accordingly, applicants request reconsideration and withdrawal of the rejection of dependent claims 37-42, 44-47, 49, 50, 52-55, 57-62, 65, 66, 70-81, 83, 84, and 89-96 at least because of their dependencies and for the reasons discussed above in connection with independent claims 36, 48, 56, 64, 68, 69, and 82.

Dependent Claims 90-96

Dependent claim 90, which depends from independent claim 36, further limits independent claim 36 by reciting, among other features, determining if a recipient is capable of participating in video instant messaging in response to initiating a text instant messaging session between a sender and the recipient and enabling a graphical user interface displayed to the sender to reflect that the recipient is capable of participating in video instant messaging based on a determination that the recipient is capable of participating in video instant messaging.

The final Office Action acknowledges that DeSimone, Ozkan, and Muldoon fail to describe or suggest these features of dependent claim 90. Final Office Action of March 18, 2009 at page 16, lines 10-15. Therefore, the final Office Action relies on Doty for teaching these features of dependent claim 90 instead.

Doty teaches a system that streams video to an e-mail recipient using a web-based e-mail application. *See e.g.*, Doty at Abstract. As described by Doty, Doty's system displays the video streamed to the e-mail recipient in the same web page through which the e-mail recipient sends and receives e-mails using the web-based e-mail application. *See e.g.*, Doty at Abstract and FIG. 4. As further described by Doty, before video is streamed to the e-mail recipient, Doty's system determines certain capabilities of the e-mail recipient's computer and then streams the video to the e-mail recipient in a format and at a bit-rate that are determined to be appropriate based upon the determined capabilities of the e-mail recipient's computer. *See, e.g.*, Doty at col. 8, line 45 to col. 9, line 4.

Notably, Doty describes that the video streamed to the e-mail recipient is produced and streamed to the e-mail recipient by an organization that is responsible for producing and streaming video to e-mail users, not by other users who have sent e-mails to the e-mail recipient. *See* Doty at col. 10, lines 33 to col. 12, line 43. Because Doty describes that the video streamed to the e-mail recipient is produced and streamed to the e-mail user by an organization that is

independent from and unrelated to users who have sent e-mails to the e-mail recipient, Doty does not describe or suggest determining if the e-mail recipient is capable of participating in video messaging *in response to initiating a communications session between the e-mail recipient and an e-mail user who has or is going to send an e-mail to the e-mail recipient.* Furthermore, because Doty describes that the video streamed to the e-mail recipient is produced and streamed to the e-mail user by an organization that is independent from and unrelated to users who have sent e-mails to the e-mail recipient, it is not surprising that Doty does not describe or suggest indicating any of the e-mail recipient's capabilities, let alone the e-mail recipient's capability to engage in video messaging, to an e-mail user who has or is going to send an e-mail to the e-mail recipient.

Thus, even when Doty's teachings are combined with those of DeSimone, Ozkan, and Muldoon, the combination does not describe or suggest determining if a recipient is capable of participating in video instant messaging in response to initiating a text instant messaging session between a sender and the recipient and enabling a graphical user interface displayed to the sender to reflect that the recipient is capable of participating in video instant messaging based on a determination that the recipient is capable of participating in video instant messaging, as recited in dependent claim 90. Accordingly, for at least this additional reason, applicants request reconsideration and withdrawal of the rejection of dependent claim 90.

Each of dependent claims 91-96, which depend from independent claims 48, 56, 64, 68, 69, and 82, respectively, recite features that are similar to those recited in dependent claim 90 and discussed above. Accordingly, applicants request reconsideration and withdrawal of the rejection of dependent claims 91-96 for at least the additional reasons discussed above in connection with dependent claim 90.

Conclusion

Applicants submit that all claims are in condition for allowance.

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims)

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that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

No fees are believed due in connection with the filing of this Reply. In the event that any charges or credits are due in connection with the filing of this Reply or otherwise, please apply such charges or credits to Deposit Account 06-1050.

Respectfully submitted,

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